IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.3848 OF 2006
AND
CRIMINAL APPLICATION NO.3852 OF 2006

Umesh R. Shah and another ...Applicants.
V/s.
The State of Maharashtra & another ...Respondents.
(in both Applications)

Shri V.N.Golwala, adv. i/b M/s.V.N.Ginwala & Co. for the Applicants.
Smt.M.M.Deshmukh, APP for the Respondent No.1/State.
Shri Prashant P. Puria, adv. for respondent no.2.

CORAM: J.H.BHATIA, J.
DATE : 16th January, 2007.

P.C.:

1. Both these applications can be disposed off by a common order. Heard Mr.Golwala, the learned counsel for the applicants and Mr.Prashant P. Puria, the learned counsel for respondent no.1.

2. These applications are filed for transfer of Criminal Case No.105 of 2006 and Criminal Case No.100 of 2006 from the file of Chief Judicial Magistrate, Dadra & Nagar Haveli at Silvassa to any Court of Metropolitan Magistrate at Bombay on the ground of inconvenience and on the ground that both the parties are residing and carrying on business at Bombay. To state in brief, the applicants in both the matters had issued the cheques for payment of certain amount to the

respondent/complainant towards the price of goods purchased by them. Cheques were issued at Bombay but the cheques were presented for encashment to the State Bank of India, Silvasssa Branch. On presentation through proper channel, cheques were dishonoured with the reason that account is closed. As this intimation was given to the respondent/complainant at Silvassa, he filed two complaints based on two separate cheques in the Court of C.J.M., Silvassa. Process has been issued. The applicants/accused contend that they and complainant both are residing and carrying on business at Bombay and, therefore, matters be transferred to Bombay.

3. There is no dispute that some part of the transactions took place at Bombay and some part took place at Silvassa and within the meaning of Paragraph 16 of the judgment in **K.Bhaskeran v. Sankaran Vaidhya**n **Balan & Anr.** 1999 ALL M.R.CRIMINAL 1845 (Supreme Court), both the Courts will have the jurisdiction to entertain the complaints.

4. The learned counsel for the respondent/complainant makes a statement that for last sometime, the complainant has shifted to Silvassa and he is also residing and carrying on business there. According to him, the applicant is interested in

transferring both the matters at Bombay taking into consideration the huge pendency of the criminal cases under Section 138 of the Negotiable Instruments Act and to take the benefit of delay which is likely to occur in disposal of the matters. In view of these arguments, I specifically asked Mr.Golwala as to when the accused is willing to make payments of the cheque amounts but he responded that he may take about one year. Admittedly, he had also not given any reply to the statutory notice which was issued to the accused after bouncing of the cheques. I find that there is a substance in the contention of the learned counsel for the respondent/complainant. The intention behind filing these two applications before this Court is to get the matters transferred to Bombay and to see that disposal of the cases is delayed inordinately taking into consideration huge and heavy pendency of the criminal cases under Section 138 of the Negotiable Instruments Act. On the other hand, there are very few matters pending before the C.J.M.,Silvassa. Matters can be taken up there and disposed off at the earliest. Taking into consideration the circumstances, I do not see any reason to transfer the matters at Bombay.

5. For the aforesaid reasons, both the applications stand rejected.

6. At this stage, Mr.Golwala, the learned counsel for the applicants seeks continuation of stay to the proceedings of the trial Court for one week so that the applicants may challenge this order in the Supreme Court. Proceedings before the trial Court shall continue to be stayed till 23rd January, 2007.

(J.H.Bhatia,J.)